

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 294

HOUSE BILL 2436

AN ACT

AMENDING SECTIONS 4-111 AND 4-209, ARIZONA REVISED STATUTES; REPEALING SECTION 4-243.03, ARIZONA REVISED STATUTES; AMENDING SECTION 4-244.05, ARIZONA REVISED STATUTES; RELATING TO THE REGULATION OF SPIRITUOUS LIQUOR.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 4-111, Arizona Revised Statutes, is amended to
3 read:

4 4-111. State liquor board; department of liquor licenses and
5 control; members; director; appointment and removal

6 A. There is created the department of liquor licenses and control
7 which consists of the state liquor board and the office of director of the
8 department.

9 B. FROM AND AFTER JANUARY 31, 2003, the board consists of seven
10 members to be appointed by the governor pursuant to section 38-211. Six FIVE
11 of the members of the board shall not be financially interested directly or
12 indirectly in business licensed to deal with spirituous liquors. ~~One member~~
13 TWO MEMBERS shall currently be engaged in business in the spirituous liquor
14 industry or have been engaged in the past in business in the spirituous
15 liquor industry, AT LEAST ONE OF WHOM SHALL CURRENTLY BE A RETAIL LICENSEE
16 OR EMPLOYEE OF A RETAIL LICENSEE. One member shall be a member of a
17 neighborhood association recognized by a county, city or town. The term of
18 members is three years. Members' terms expire on the third Monday in January
19 of the appropriate year. The governor may remove any member of the board for
20 cause. No member may represent a licensee before the board or the department
21 for a period of one year after the conclusion of the member's service on the
22 board.

23 C. The board shall annually elect from its membership a chairman and
24 vice-chairman. A majority of the board constitutes a quorum, and a
25 concurrence of a majority of a quorum is sufficient for taking any action.
26 If there are unfilled positions on the board, a majority of those persons
27 appointed and serving on the board constitutes a quorum.

28 D. The chairman may designate panels of not less than three members.
29 A panel may take any action which the board is authorized to take pursuant
30 to this title. Such action includes the ability to hold hearings and hear
31 appeals of administrative disciplinary proceedings of licenses issued
32 pursuant to this chapter. A panel shall not, however, adopt rules as
33 provided in section 4-112, subsection A, paragraph 2. The chairman may from
34 time to time add additional members or remove members from a panel. A
35 majority of a panel may upon the concurrence of a majority of the members of
36 the panel take final action on hearings and appeals of administrative
37 disciplinary proceedings concerning licenses issued pursuant to this chapter.

38 E. Members of the board are entitled to receive compensation at the
39 rate of fifty dollars per day while engaged in the business of the board.

40 F. A person shall not be appointed to serve on the board unless the
41 person has been a resident of this state for not less than five years prior
42 to the person's appointment. No more than four members may be of the same
43 political party. Persons eligible for appointment shall have a continuous
44 recorded registration pursuant to title 16, chapter 1 with the same political

1 party or as an independent for at least two years immediately preceding
2 appointment. No more than two members may be appointed from the same county.

3 G. The governor shall appoint the director, pursuant to section
4 38-211, who shall be a qualified elector of the state and experienced in
5 administrative matters and enforcement procedures. The director shall serve
6 concurrently with the governor but may be removed by the governor for any of
7 the following causes:

- 8 1. Fraud in securing appointment.
- 9 2. Incompetency.
- 10 3. Inefficiency.
- 11 4. Inexcusable neglect of duty.
- 12 5. Insubordination.
- 13 6. Dishonesty.
- 14 7. Drunkenness on duty.
- 15 8. Addiction to the use of narcotics or habit-forming drugs.
- 16 9. Inexcusable absence without leave.
- 17 10. Final conviction of a felony or a misdemeanor involving moral
18 turpitude.
- 19 11. Discourteous treatment of the public.
- 20 12. Improper political activity.
- 21 13. Wilful disobedience.
- 22 14. Misuse of state property.

23 H. The director is entitled to receive a salary as determined pursuant
24 to section 38-611.

25 Sec. 2. Section 4-209, Arizona Revised Statutes, is amended to read:

26 4-209. Fees for license, application, issuance, renewal and
27 transfer; late renewal penalty; seasonal operation;
28 surcharges

29 A. A fee shall accompany an application for an original license or
30 transfer of a license, or in case of renewal, shall be paid in advance. Every
31 license expires annually. A licensee who fails to renew the license on or
32 before the due date shall pay a penalty of one hundred fifty dollars which
33 the licensee shall pay with the renewal fee. A license renewal that is
34 deposited, properly addressed and postage prepaid in an official depository
35 of the United States mail on or before the due date shall be deemed filed and
36 received by the department on the date shown by the postmark or other
37 official mark of the United States postal service stamped on the
38 envelope. If the due date falls on a Saturday, Sunday or other legal
39 holiday, the renewal shall be considered timely if it is received by the
40 department on the next business day. The director may waive a late renewal
41 penalty if good cause is shown by the licensee. A licensee who fails to
42 renew the license on or before the due date may not sell, purchase or
43 otherwise deal in spirituous liquor until the license is renewed. A license
44 which is not renewed within sixty days after the due date is deemed
45 terminated. The director may renew the terminated license if good cause is

1 shown by the licensee. An application fee for an original license or the
2 transfer of a license shall be one hundred dollars, which shall be retained
3 by this state.

4 B. Issuance fees for original licenses shall be:

5 1. For an in-state producer's license, to manufacture or produce
6 spirituous liquor in this state, one thousand five hundred dollars.

7 2. Except as provided in paragraph 15 of this subsection, for an
8 out-of-state producer's, exporter's, importer's or rectifier's license, two
9 hundred dollars.

10 3. For a domestic microbrewery license, three hundred dollars.

11 4. For a wholesaler's license, to sell spirituous liquors, one
12 thousand five hundred dollars.

13 5. For a government license issued in the name of a county, city or
14 town, one hundred dollars.

15 6. For a bar license, which is an on-sale retailer's license to sell
16 all spirituous liquors primarily by individual portions and in the original
17 containers, one thousand five hundred dollars.

18 7. For a beer and wine bar license, which is an on-sale retailer's
19 license to sell beer and wine primarily by individual portions and in the
20 original containers, one thousand five hundred dollars.

21 8. For a conveyance license issued to an operating railroad company,
22 to sell all spirituous liquors in individual portions or in the original
23 containers on all passenger trains operated by the railroad company, or to
24 an operating airline company, to sell or serve spirituous liquors solely in
25 individual portions on all passenger planes operated by the airline company,
26 or to a boat operating in the waters of this state, to sell all spirituous
27 liquors in individual portions or in the original containers for consumption
28 on the boat, one thousand five hundred dollars.

29 9. For a liquor store license, which is an off-sale retailer's license
30 to sell all spirituous liquors, one thousand five hundred dollars.

31 10. For a beer and wine store license, which is an off-sale retailer's
32 license to sell beer and wine, one thousand five hundred dollars.

33 11. For a hotel-motel license issued as such, to sell and serve
34 spirituous liquors solely for consumption on the licensed premises of the
35 hotel or motel, one thousand five hundred dollars.

36 12. For a restaurant license issued as such, to sell and serve
37 spirituous liquors solely for consumption on the licensed premises of the
38 restaurant, one thousand five hundred dollars.

39 13. For a domestic farm winery license, one hundred dollars.

40 14. For a club license issued in the name of a bona fide club qualified
41 under this title to sell all spirituous liquors on-sale, one thousand
42 dollars.

43 15. For an out-of-state winery that sells not more than fifty cases of
44 wine in this state in a calendar year, twenty-five dollars.

1 C. The department may issue licenses with staggered renewal dates to
2 distribute the renewal work load as uniformly as practicable throughout the
3 twelve months of the calendar year. If a license is issued less than six
4 months before the scheduled renewal date of the license, as provided by the
5 department's staggered license renewal system, one-half of the annual license
6 fee shall be charged.

7 D. The annual fees for licenses shall be:

8 1. For an in-state producer's license, to manufacture or produce
9 spirituous liquors in this state, three hundred fifty dollars.

10 2. Except as provided in paragraph 15 of this subsection, for an
11 out-of-state producer's, exporter's, importer's or rectifier's license, fifty
12 dollars.

13 3. For a domestic microbrewery license, three hundred dollars.

14 4. For a wholesaler's license, to sell spirituous liquors, two hundred
15 fifty dollars.

16 5. For a government license issued to a county, city or town, one
17 hundred dollars.

18 6. For a bar license, which is an on-sale retailer's license to sell
19 all spirituous liquors primarily by individual portions and in the original
20 containers, one hundred fifty dollars.

21 7. For a beer and wine bar license, which is an on-sale retailer's
22 license to sell beer and wine primarily by individual portions and in the
23 original containers, seventy-five dollars.

24 8. For a conveyance license issued to an operating railroad company,
25 to sell all spirituous liquors in individual portions or in the original
26 containers on all passenger trains operated by the railroad company, or to
27 an operating airline company, to sell or serve spirituous liquors solely in
28 individual portions on all passenger planes operated by the airline company,
29 or to a boat operating in the waters of this state, to sell all spirituous
30 liquor in individual portions or in the original containers for consumption
31 on the boat, two hundred twenty-five dollars.

32 9. For a liquor store license, which is an off-sale retailer's license
33 to sell all spirituous liquors, fifty dollars.

34 10. For a beer and wine store license, which is an off-sale retailer's
35 license to sell beer and wine, fifty dollars.

36 11. For a hotel-motel license issued as such, to sell and serve
37 spirituous liquors solely for consumption on the licensed premises of the
38 hotel or motel, five hundred dollars.

39 12. For a restaurant license issued as such, to sell and serve
40 spirituous liquors solely for consumption on the licensed premises of the
41 restaurant, five hundred dollars.

42 13. For a domestic farm winery license, one hundred dollars.

43 14. For a club license issued in the name of a bona fide club qualified
44 under this title to sell all spirituous liquors on-sale, one hundred fifty
45 dollars.

1 15. For an out-of-state winery that sells not more than twenty-five
2 cases of wine in this state in a calendar year, twenty-five dollars.

3 E. Where the business of an on-sale retail licensee is seasonal, not
4 extending over periods of more than six months in any calendar year, the
5 licensee may designate the periods of operation, and a license may be granted
6 for those periods only, upon payment of one-half of the fee prescribed in
7 subsection D of this section.

8 F. Transfer fees from person to person for licenses transferred
9 pursuant to section 4-203, subsection C shall be three hundred dollars.

10 G. Transfer fees from location to location, as provided for in section
11 4-203, shall be one hundred dollars.

12 H. Assignment fees for a change of agent, as provided for in section
13 4-202, subsection C, shall be one hundred dollars, except that where a
14 licensee holds multiple licenses the assignment fee for the first license
15 shall be one hundred dollars and the assignment fee for all remaining
16 licenses transferred to the same agent shall be fifty dollars each, except
17 that the aggregate assignment fees shall in no event exceed one thousand
18 dollars.

19 I. No fee shall be charged by the department for an assignment of a
20 liquor license in probate or an assignment pursuant to the provisions of a
21 will or pursuant to a judicial decree in a domestic relations proceeding
22 which assigns ownership of a business which includes a spirituous liquor
23 license to one of the parties in the proceeding. In the case of
24 nontransferable licenses no fee shall be charged by the department for the
25 issuance of a license for a licensed business pursuant to a transfer of the
26 business in probate or pursuant to the provisions of a will or pursuant to
27 a judicial decree in a domestic relations proceeding which assigns ownership
28 of the business to one of the parties in the proceeding.

29 J. The director shall assess a surcharge of twenty THIRTY dollars on
30 all licenses prescribed in subsection D, paragraphs 6, 7 and 12 of this
31 section. Monies from the surcharge shall be used by the department
32 exclusively for the costs of an auditor and support staff to review
33 compliance by applicants and licensees with the requirements of section
34 4-205.02, subsection E. The department shall assess the surcharge as part
35 of the annual license renewal fee.

36 K. The director shall assess a surcharge of ~~twenty-five~~ THIRTY-FIVE
37 dollars on all licenses prescribed in this section. Monies from the
38 surcharge shall be used by the department exclusively for the costs of an
39 enforcement program to investigate licensees who have been the subject of
40 multiple complaints to the department. The enforcement program shall respond
41 to complaints against licensees by neighborhood associations, by neighborhood
42 civic groups and from municipal and county governments. The department shall
43 assess the surcharge as part of the annual license renewal fee.

44 L. The director shall assess a surcharge of ~~ten~~ TWENTY dollars on all
45 licenses prescribed in subsection D, paragraphs 11 and 12 of this section and

1 ~~twenty-five~~ THIRTY-FIVE dollars on all other licenses prescribed in this
2 section. Monies from the surcharge and from surcharges imposed pursuant to
3 subsection K of this section shall be used by the department exclusively for
4 the costs of a neighborhood association interaction and liquor enforcement
5 management unit. The unit shall respond to complaints from neighborhood
6 associations, neighborhood civic groups and local governing authorities
7 regarding liquor violations. The director shall report the unit's activities
8 to the board at each board meeting or as the board may direct.

9 Sec. 3. Repeal

10 Section 4-243.03, Arizona Revised Statutes, is repealed.

11 Sec. 4. Section 4-244.05, Arizona Revised Statutes, is amended to
12 read:

13 4-244.05. Unlicensed business establishment or premises;
14 unlawful consumption of spirituous liquor; civil
15 penalty; seizure and forfeiture of property

16 A. A person owning, operating, leasing, managing or controlling a
17 business establishment or business premises which are not properly licensed
18 pursuant to this title and in which any of the following occur shall not
19 allow the consumption of spirituous liquor in the establishment or on the
20 premises:

- 21 1. Food or beverages are sold.
- 22 2. Entertainment is provided.
- 23 3. A membership fee or a cover charge for admission is charged.
- 24 4. A minimum purchase or rental requirement for goods or services is
25 charged.

26 B. A person shall not consume spirituous liquor in a business
27 establishment or on business premises which are not properly licensed
28 pursuant to this title in which food or beverages are sold, entertainment is
29 provided, a membership fee or a cover charge for admission is charged or a
30 minimum purchase or rental requirement for goods or services is charged.

31 C. In addition to or in lieu of other fines or civil penalties imposed
32 for a violation of this section or any other action taken by the board or
33 director, the board or superintendent DIRECTOR may conduct a hearing subject
34 to the requirements of section 4-210, subsection F to determine whether a
35 person has violated subsection A of this section. If the board or director
36 determines, after a hearing, that a person has violated subsection A of this
37 section the board or director may impose a civil penalty of not less than two
38 hundred nor more than five thousand dollars for each offense. A civil
39 penalty imposed pursuant to this section by the director may be appealed to
40 the board.

41 D. IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW, ANY MONIES USED
42 OR OBTAINED IN VIOLATION OF THIS CHAPTER MAY BE SEIZED BY ANY PEACE OFFICER
43 IF THE PEACE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THE MONEY HAS BEEN
44 USED OR IS INTENDED TO BE USED IN VIOLATION OF THIS SECTION.

1 E. IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW, THE RECORDS OF
2 AN ESTABLISHMENT THAT IS IN VIOLATION OF THIS SECTION MAY BE SEIZED BY ANY
3 PEACE OFFICER IF THE PEACE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THE
4 ESTABLISHMENT IS OPERATING WITHOUT A VALID LICENSE ISSUED PURSUANT TO THIS
5 TITLE.

6 F. IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW, ANY AMOUNT OF
7 ALCOHOL MAY BE SEIZED BY ANY PEACE OFFICER IF THE PEACE OFFICER HAS PROBABLE
8 CAUSE TO BELIEVE THAT THE ALCOHOL IS BEING USED OR IS INTENDED TO BE USED IN
9 VIOLATION OF THIS SECTION.

10 G. IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW, THE FOLLOWING
11 PROPERTY SHALL BE FORFEITED PURSUANT TO SECTION 13-2314 OR TITLE 13, CHAPTER
12 39:

13 1. ALL PROCEEDS AND OTHER ASSETS THAT ARE DERIVED FROM A VIOLATION OF
14 THIS SECTION.

15 2. ANYTHING OF VALUE THAT IS USED OR INTENDED TO BE USED TO FACILITATE
16 A VIOLATION OF THIS SECTION.

17 H. A PERSON WHO OBTAINS PROPERTY THROUGH A VIOLATION OF THIS SECTION
18 IS DEEMED TO BE AN INVOLUNTARY TRUSTEE OF THAT PROPERTY. AN INVOLUNTARY
19 TRUSTEE AND ANY OTHER PERSON WHO OBTAINS THE PROPERTY, EXCEPT A BONA FIDE
20 PURCHASER WHO PURCHASES THE PROPERTY FOR VALUE WITHOUT NOTICE OF OR
21 PARTICIPATION IN THE UNLAWFUL CONDUCT, HOLDS THE PROPERTY, INCLUDING ITS
22 PROCEEDS AND OTHER ASSETS, IN CONSTRUCTIVE TRUST FOR THE BENEFIT OF THE
23 PERSONS ENTITLED TO REMEDIES PURSUANT TO SECTION 13-2314 OR TITLE 13, CHAPTER
24 39.

25 ~~D.~~ I. The board or director may adopt rules authorizing and
26 prescribing limitations for the possession or consumption of spirituous
27 liquor at establishments or premises falling within the scope of subsections
28 A and B of this section. Rules adopted pursuant to this subsection shall
29 authorize the possession or consumption of spirituous liquor only at
30 establishments or premises which permit the consumption or possession of
31 minimal amounts of spirituous liquor and which meet both of the following
32 criteria:

33 1. The possession or consumption of spirituous liquor is permitted
34 only as an incidental convenience to the customers of the establishment or
35 premises.

36 2. The possession or consumption of spirituous liquor is permitted
37 only within the hours of lawful sale as prescribed in this title, and is
38 limited to no more than ten hours per day.

39 ~~E.~~ J. Any rules adopted pursuant to subsection ~~D~~ I of this section
40 shall prescribe:

41 1. The maximum permitted occupancy of an establishment or premises.

42 2. The hours during which spirituous liquor may be possessed or
43 consumed.

44 3. The amount of spirituous liquor that a person may possess or
45 consume.

1 4. That the director, the director's agents and any peace officer
2 empowered to enforce the provisions of this title may, in enforcing the
3 provisions of this title, visit and inspect the establishment or premises
4 during the business hours of the premises or establishment.

5 F. K. Any rules adopted pursuant to subsection D-1 of this section
6 may prescribe separate classifications of establishments or premises at which
7 spirituous liquor may be possessed or consumed and may establish any other
8 provisions relating to the possession or consumption of spirituous liquor at
9 establishments or premises falling within the scope of subsections A and B
10 of this section which are necessary to maintain the health and welfare of the
11 community.

12 G. L. This section does not apply to establishments or premises that
13 are not licensed pursuant to this title and on which occurs the consumption
14 of spirituous liquor if the establishment or premises are owned, operated,
15 leased, managed or controlled by the United States, this state or a city or
16 county of this state.

17 Sec. 5. Requirements for enactment; two-thirds vote

18 Pursuant to article IX, section 22, Constitution of Arizona, this act
19 is effective only on the affirmative vote of at least two-thirds of the
20 members of each house of the legislature and is effective immediately on the
21 signature of the governor or, if the governor vetoes this act, on the
22 subsequent affirmative vote of at least three-fourths of the members of each
23 house of the legislature.

APPROVED BY THE GOVERNOR MAY 22, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 23, 2002.

Passed the House April 8, 2002,

Passed the Senate April 30, 2002

by the following vote: 40 Ayes,

by the following vote: 21 Ayes,

10 Nays, 10 Not Voting
Article II, Section 22

6 Nays, 3 Not Voting
with Article IX, Sec. 22

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

H.B. 2436

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 16, 2002,

by the following vote: 46 Ayes,

12 Nays, 2 Not Voting
Article 17, Section 22

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

16 day of May, 2002

at 3:00 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 22nd day of

May, 2002,

at 4:45 o'clock P. M.

[Signature]
Governor of Arizona

H.B. 2436

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 23 day of May, 2002

at 3:23 o'clock P. M.

[Signature]
Secretary of State